

EXTRAORDINARY LICENSING COMMITTEE held at 10.00 am at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN on 16 DECEMBER 2009

Present:- Councillor E W Hicks – Chairman

Councillors E L Bellingham-Smith, J E Hudson and R M Lemon.

Officers in attendance:- M Hardy (Licensing Officer), M Perry (Assistant Chief Executive), C Roberts (Democratic Services Officer) and A Turner (Licensing Officer).

LC38

DETERMINATION OF PRIVATE HIRE DRIVER'S LICENCE

The Chairman of the Committee opened the proceedings and introduced the Members of the Panel to the licensed driver who was present with his current employer.

The Committee considered the report presented by the Licensing Officer setting out the history of a matter which had been referred by him to the Committee in view of the possibility that the holder of a private hire licence might no longer be a fit and proper person to retain his licence.

The Assistant Chief Executive said that in fact the licence had been issued in error to a driver who did not meet the Council's licensing standards which was why the matter was before the Committee. He also drew to the attention of the Committee the contents of the background papers. They included the driver's driving licence and his application to the Council for renewal of his private driver's licence at the end of 2008. The Assistant Chief Executive informed Members of the Committee that the documents appeared to disclose an offence of making a false statement in addition to the breach of condition of failure to notify referred to in the Licensing Officer's report.

At the invitation of the Chairman the Licensing Officer addressed the Committee, having first ascertained that the private hire driver had received a copy of the report. He explained that in December 2007 although the private hire driver had disclosed a pending prosecution his licence was renewed due to an administrative error within the Licensing Department. In December 2008 when applying for renewal again he did not supply the licence with the application and the renewed licence was issued in error in as much as the endorsement on the licence for six penalty points was overlooked. The Licensing Officer informed the Committee that the driver was unsure how fast he had been driving when he was stopped, and that loss of

his licence could mean loss of his employment. He also explained the Essex Police policy for prosecution in such cases.

There were no questions for the Licensing Officer. The private hire driver then gave his account, stating that he remembered circling the answer about points or impending prosecution and had informed his then employer, Checker Cars. The person he told there said he should write to the Council about this. The driver believed he had written to the Council about this. He was unable to produce a copy of the letter because it was stored on his computer which was in storage following a house move.

In answer to questions from Members as to why he had answered "No" on the 2008 renewal application to the question "Have you in the last year been convicted of any offence" the private hire driver replied that he thought he had adequately disclosed the conviction by notifying the Council of the pending prosecution in December 2007 and by sending the endorsed licence to the Council in 2008.

The Assistant Chief Executive said that as regards the notification of impending prosecution, it would have been unnecessary to tell the Council any more if he had been acquitted but that the Council needed to know about convictions as they might relate to licensing standards.

Councillor Lemon asked about the speed at the time of the offence, which police usually referred to when stopping a driver. The private hire driver replied that he could not remember it; a lot had happened in his life since that time. Councillor Lemon suggested that the rehabilitation course considered by the driver as a possibility would only have been available for a speed of up to 42 mph. The private hire driver said that he did not know.

The Chairman of the Committee was concerned to establish the speed and the Assistant Chief Executive said that he would inform Members of the sentencing guidelines used in magistrates' courts in this context.

The Committee then heard from the current employer of the private hire driver who praised his honesty, efficiency and driving ability and added that he had had serious problems arising from a death in his family. He felt the driver should not be appearing in front of the Committee. The Chairman explained that the Council had to have and maintain a licensing policy and that it was very important that convictions were notified.

Members questioned the employer about the speeding and the employer made comments about the straightness of the road,

clear vision and lack of pedestrians. The private hire driver gave details of the commencement and termination points of the 30 and 40 mph limits on the road in question.

The Chairman asked the private hire driver whether he wished to ask any further questions and he replied that he did not.

The Assistant Chief Executive then provided legal advice to the meeting in the presence of all parties, derived from the Guidelines on sentencing used by the Magistrates' Association and from the case of Melton v Uttlesford District Council. The sentencing guidelines linked 6 points with a speed of 51-60 mph in a 30 mph area in the absence of any aggravating circumstances. The case of Melton made it clear that in the absence of extenuating circumstances the courts were bound to apply the licensing policy of a council as if the court stood in the council's shoes; the question what amounted to "fit and proper" could be answered only in the light of the particular council's policy. Furthermore the case of Hussain had established that personal circumstances were relevant only in extremely rare cases to extenuate a driver's conduct.

The private hire driver was invited to make a closing statement . He apologised for the offence and said that he did not intend to speed or to mislead the Council. He understood that the effect on his livelihood was not relevant in the case but he asked the Committee to bear in mind that there had been no offences in the last year. His employer reiterated that in his experience of the past year the private hire driver was a commendable person and fit driver.

LC39

EXCLUSION OF PRESS AND PUBLIC

RESOLVED that the press and public be excluded from the meeting whilst the Committee considered its decision on the grounds that the consideration involved exempt information within the meaning of s.100 I and paragraph 6 of Schedule 12A Local Government Act 1972 and that it was in the public's interest so to do to permit a free and frank exchange of views between Members.

The Panel of Members retired to consider their decision at 10.57 am.

LC40

DETERMINATION OF PRIVATE HIRE DRIVER'S LICENCE

The Panel of Members returned to the meeting at 11.45 am and the Chairman announced that the Committee had reached the

following decision which was read by the Assistant Chief Executive.

“RESOLVED

In this case the private hire driver was stopped for speeding on 7 December 2007. He applied to renew his licence with this Council and disclosed the fact that he had a possible pending prosecution. This meant that at that stage he did not meet licensing standards and officers did not have delegated authority to grant the licence. Regrettably the licence was issued in error. In reality had officers brought the matter to the Committee then the licence would have been granted but reviewed after the prosecution had been dealt with.

On 4 March 2008 the private hire driver appeared before Harlow Magistrates Court where he pleaded guilty to excess speed. He was fined £200 and his licence was endorsed with 6 points. The private hire driver has not given any details of the speed he was driving. Having regard to the Sentencing Guidelines to Magistrates and in the absence of evidence of any aggravating factors the Committee assume that the private hire driver was driving between 51-60 mph in a 30 mph limit.

Under his conditions of licence the private hire driver ought to have reported the conviction in writing to the Council within 7 days. The private hire driver said that he informed his then employer (Checker Cars) who advised him to inform the Council. He said that he thought he had sent a letter to the Council which was on his computer but he did not produce a copy. No such letter was received by the Council. The Committee find on the balance of probabilities no such letter was sent.

On 31 December 2008 the private hire driver again applied to renew his licence. On his application form he indicated that he had no convictions in the previous 12 months. He said that as he had disclosed the pending prosecution in 2007 the Council were aware of the position. The Committee did not find this explanation convincing. His driver's licence was not produced along with the application form. As the licence was due to expire a new licence was prepared to be issued once the driver's licence was produced. When the licence was produced it disclosed the endorsement. Under the Council's policy where a driver has a serious motoring conviction (defined as a conviction carrying 6 points or

more for a single offence) they do not meet licensing standards. In such cases a licence cannot be granted under delegated powers. Regrettably the endorsement was overlooked and the licence issued in error.

Had the matter come before the Committee there are no exceptional circumstances which would have justified granting a licence contrary to policy. In the circumstances as the licence should not have been issued and following the guidance in *Melton v UDC* the Committee revokes the licence for "any other reasonable cause" namely that the licence was issued in error to a driver who is not a fit and proper person.

The purpose of the licensing regime is the protection of the public. When a driver is not a fit and proper person the safety of the public is at risk and in the interests of public safety the Committee directs that the revocation shall have immediate effect pursuant to s61 (2B) of the Local Government Miscellaneous Provisions Act 1976. In reaching this conclusion the Committee also has regard to the guidance in *Melton v UDC*.

The Committee takes a serious view of the fact that the private hire driver did not report the conviction within 7 days of it occurring as required by the conditions of the licence and that he made a false statement on his application for renewal in December 2008. However in the circumstances of the Committee decision no other sanction is appropriate.

The Committee also expressed its serious concern that on at least three occasions (one with Mr Melton and two with the private hire driver) licences have been purportedly issued under delegated powers to persons who do not meet licensing standards and requests the Assistant Chief Executive to review the procedures for the issue of licences to prevent a repetition.

The private hire driver was advised of the right to appeal within three weeks to the appropriate magistrates' court and the fee for this. He was informed that he must not drive pending the termination of any appeal because the decision of the Committee was to revoke the licence with immediate effect."

The meeting ended at 11.50 am.